IN THE HIGH COURT OF PUNJAB & HARYANA CHANDIGARH

Criminal Revision No.702 OF 1994
Date of Decision: October 01, 2007

SOM NATH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE A.N.JINDAL

Present: Mr.Brijeshwar Singh Kanwar,Advocate,
as amicus curiae.
Mr. Anter Singh Brar,DAG Punjab.

A.N.JINDAL, J

Assailed in this petition is the judgment dated 18.10.1994 passed by Addl. Sessions Judge, Patiala dismissing the appeal of the petitioner against the judgment dated 03.08.1994 passed by Judicial Magistrate 1st Class Patiala convicting the petitioner under Section 138 of the Negotiable Instruments Act and sentencing him to undergo RI for six months and to pay a fine of Rs. 1,000/-.

The facts essential for the disposal of the present petition are that Rajpat Yadav(hereinafter referred to as the 'complainant') was employed in the Escorts Private Ltd (Bahadurgarh) and was power of attorney holder of Avodh Narain, Chander Mohan, Puran Singh, Gurdev Singh, Niranjan Singh, Kirpal Singh and Rameshwar Parshad. In the month of Jan 1989, the petitioner claiming himself to be the agent of Uday Savings

and General Investment Ltd. Regd. No. 1559, Sector 18 D, Chandigarh approached the complainant to invest some amount in his company for which he was ready to pay handsome interest with an insurance cover. He also assured that he will be liable against the loss in case company goes missing or its whereabouts are not known. After making the aforesaid assurance, the respondent Rajpat Yadav paid a sum of Rs. 70,000/- but later on he came to know that the petitioner had not deposited the said amount with the company. His request to return the amount fell to deaf ears. On persistent demands, petitioner handed over cheques No.0088707 and No.0088706 dated 31.01.1991 and 10.02.1991 respectively but on tendering the cheque with the drawee Bank, the same were returned with the remarks "Payment Stopped By Drawer" The said reports were followed by a notice dated 27.02.1991 but to no response. Hence a complaint was filed.

After the preliminary evidence, the petitioner was summoned. The petitioner pleaded denial to a notice u/s 138 of Negotiable Instruments Act and claimed trial. Ultimately, the complaint ended in conviction. The appeal was also dismissed. Hence this petition.

The issuance of the cheques have not been denied by the petitioner but in his statement under Section 313 Cr. P.C, he submitted that the cheques were obtained from him by use of force and under undue influence for which he had lodged a complaint with the police. Besides the statement made by the petitioner, ample evidence has been brought on record to prove the issuance of the cheque as well as dishonouring of the same.

Power of attorney in the name of the complainant Exhibit P4 has been duly proved. The payment of loan advanced by the complainant attorney has also been established.

From the testimony of S.K.Dudeja, Head Cashier of the Union Bank of India, Ambala Cantt, Rajinder Kaur, Clerk of Union Bank of India, Main Branch, Patiala, it is apparent that both the cheques were not honoured. Statement of account Ex. P3 of the petitioner establishes that on 31.01.1991 there was a balance of Rs. 875.58 and on 10.02.1991 Rs. 99.58 in his account.

Thus no doubt is left in my mind to hold that the accused knowing fully well that the same shall not be honoured intentionally issued the same. No adequate money to honour the cheques was in the account of the petitioner as such these were bounced for want of funds. The petitioner has not set up the case that the payment was stopped on account of some dispute between the parties but it appears that the petitioner in order to save himself from the criminal action, which may arise from the dishonouring of the cheque, he got this report 'Payment stopped by Drawer'. The cheques returned under the given circumstances of the case when the amount was already deficient in the account at the time when the same were issued or when these were tendered would account to dishonour for want of payment.

Regarding the other argument for non-service of notice upon him it would be suffice to say that as per the records notice was sent to him and he did not receive and return it as 'unclaimed'. Thus presumption would be of 'due

service'. A similar situation arose in case S.Prasanna vs. Vijayalakshmi, 1992(2) Recent Criminal Reports-199 wherein it was observed that in case the accused in connivance with the postal authorities sends back the registered notice with the remarks 'unclaimed' then he would be guilty of manipulating the returning of the notice/registered letter by Postal Authorities unserved on him and in these circumstances, it could be presumed that he was aware of the issuance of notice and the contents thereof. In these circumstances a constructive service of notice upon him was to be deemed, therefore, it could be held that the petitioner was duly served. A similar question arose in case C.C.Alavi Haji vs. Palapetty Muhammed and another, 2007(3)RCR (Criminal) 185 wherein it was observed as under:-

> "Section 27 gives rise to a presumption that service of notice has been effected when it is sent o the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is

sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed. [Vide Jagdish Singh v. Natthu Singh AIR 1992 SC 1604; State of M.P v. Hiralal & Ors., (1996)7 SCC 523 and V. Raja Kumari v. P.Subbarama Naidu & Anr. 2004(4) RCR(Criminal)933:2005(1) Apex Criminal 58:(2004)8 SCC 774]. It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved."

No other argument has been advanced or no law has been cited by the amicus curiae appointed by this Court.

For the foregoing reasons, finding no merit in the revision petition the same is hereby dismissed. A copy of the judgment be sent to the Court of Chief Judicial Magistrate, Patiala to pass necessary orders for procuring the presence of the petitioner in order to serve the remaining part of the sentence. The amicus curiae will be at liberty to claim his fees for assisting the Court.

(A.N.JINDAL)
JUDGE

October 01, 2007
Ruchika

To be referred to reporter: Yes/No